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|--------------|---|-----------------|---------------|
| Waivers      | First Name  | Last Name       | Claim Number  |
|              |   |                 | W-15-0001     |
| Amount       | OGC Received Date   | Assigned To     | Assigned Date |
| \$2213.50    | 02/23/2015  | Richard Feldman | 02/24/2015    |
| EPA Decision | EPA Decision Date   | Amount Approved | Status        |
| APPROVED     | 03/06/2015  | \$2260.10       | CLOSED        |
| Appeal       | Comments  |                 |               |
| No           | 2/24/15- package incomplete and advised OCFO to obtain input from OCFO and HR on basis for waiver |                 |               |

2/26/15 email to OCFO--Leonice

The responses to the questions are inadequate. For example, the response to 27 says [REDACTED] was misinformed about his salary and he assumed there would be no salary offset as a reemployed annuitant. What is the basis for HR making this statement? Former federal employees generally know there will be an offset if they go back to work for the federal government.

As I stated in my email this morning, I need from HR:

As a reemployed annuitant, I assume there would be appointment papers and other information that his HR organization would have that would explain the conditions of employment for a reemployed annuitant, what [REDACTED] was advised when he came on board and what is supposed to happen when a reemployed annuitant is hired in terms of salary offset etc, and the HR position as to why the person requesting the waiver should or should not be granted the waiver. He apparently worked for the [REDACTED] and spoke to Tom Carpenter at the time. . . . All of this should be spelled out in a memo to me.

Thanks

Type  
Re-employed Annuitant

Attachments

3/6/15 email to [REDACTED]  
Tracy,

This email is in response to your "Waiver/Remission of Indebtedness Application" dated February 17, 2015 wherein you request approval of a waiver for a gross amount of \$2213.50. On February 20, 2015, Leonice Stewart in Office of the Chief Financial Officer forwarded your request to me as the Claims Officer for EPA. For the reasons set forth herein, your request for waiver is approved.

By letter dated January 28, 2012, the Defense Finance and Accounting Service (DFAS) advised you of the debt, which resulted from the application of a salary offset to the pay you received. The dispute involved in your request for waiver covers the pay periods ending July 30, 2011 through October 8, 2011. The record also includes a February 22, 2014 letter from DFAS establishing a debt of \$46.60 for the pay period ending November 5, 2011. My decision to grant a waiver also applies to the \$46.60 debt.

Briefly stated, when EPA contacted you in 2011 to serve as a [REDACTED]

[REDACTED] At the time EPA contacted you, you were receiving a monthly CSRS annuity payment. Therefore, if EPA appointed you as special government employee to serve as a consultant, you would be a reemployed annuitant. The record discloses that at the time you were considering EPA's offer, you were concerned that as a reemployed annuitant your consultant's hourly pay rate would be offset by an amount commensurate with your retirement annuity. You understood that the [REDACTED] offered opportunities to CSRS annuitants to work part time without a salary offset. You also believed this would be the case (and your pay would not be subject to salary offset) if you served as a consultant at EPA on an intermittent basis.

EPA appointed you as a consultant sometime in July 2011 and throughout your service as a consultant you were paid the full hourly rate of \$52.83. This rate would have been offset by \$47 per hour if the salary offset amount had been taken from your pay. As a result, your hourly pay would have been \$5.83.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-226147, June 2, 1987. In the present case, I find that the erroneous payments in this instance were caused by agency error. Therefore, the only issue before me is whether you have established a sufficient basis for me to conclude that the collection of the \$2213.50 and \$46.60 debts should be waived.

Analysis

You began working at EPA in 2011 as a reemployed annuitant while under the

impression that your hourly rate of pay as a consultant would not be subject to salary offset. While you were contemplating accepting the appointment at EPA in May/June 2011, you maintain that a SAB representative assured you that there would be no salary offset. I find, however, that the documents provided to me in connection with your waiver request, except for your statement, do not definitively confirm this fact. Nevertheless, based on the record, I find that you did not know and that you should not have suspected that your hourly rate of pay was in error.

The record contains June 2011 emails which indicate that the [REDACTED] was attempting to find out whether your rate of pay would not be subject to offset; in fact, the [REDACTED] contacted an OGC attorney in this regard. Although this issue apparently was never resolved, I find that you reasonably believed that you properly received your full rate of pay and that it would not be subject to salary offset. As a [REDACTED] employee you understood there were programs to bring back former federal employees and not subject their pay to salary offset. In addition, the Standard Form 52 in the record indicates your rate of pay was \$52.83; none of the documents you signed in connection with your appointment as a consultant and none of the documents provided to me indicate that you were advised that a salary offset would, indeed, apply to your hourly rate of pay. Moreover, I believe a reasonable inference may be drawn from the circumstances surrounding your appointment. That is, but for your understanding that a salary offset would not apply, you would not have accepted the position as a consultant. A salary offset would have resulted in an hourly rate of pay of less than \$6.00 per hour,

Based on the record before me, I believe you reasonably understood that the rate of pay of \$52.83 was appropriate. The request for waiver is approved. By this email, I am requesting that OCFO work with DFAS to take whatever steps are necessary to forgive this debt.

From:  
Richard Feldman  
Assistant General Counsel and Claims Officer  
Civil Rights and Finance Law Office  
Office of General Counsel  
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